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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ROBERTO HUERTA-LOPEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-71107

Agency No. A76-611-031

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted November 8, 2005<sup>\*\*</sup>

Before: WALLACE, LEAVY and BERZON, Circuit Judges.

Roberto Huerta-Lopez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

motion to reconsider. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion, *Cano-Merida v. INS*, 311 F.3d 960, 963 (9th Cir. 2002), and we grant the petition for review.

The BIA abused its discretion when it treated Huerta-Lopez's 2003 motion as a motion to reconsider. Because Huerta-Lopez introduced evidence of alleged ineffective assistance of counsel, the BIA "misapplied its regulations to classify [Huerta-Lopez's] motion as a motion to reconsider" rather than as a motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894-97 (9th Cir. 2003). As the BIA has not addressed Huerta-Lopez's ineffective assistance of counsel claim, we remand for the agency to consider this issue in the first instance. *See INS v. Ventura*, 537 U.S. 12, 16-18(2002) (per curiam).

**PETITION FOR REVIEW GRANTED; REMANDED.**